
EXHIBIT C

F3PKGAR1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

12 CR 839 (JSR)

5 RAFAEL GARAVITO-GARCIA,

6 Defendant.

7 -----x

8 New York, N.Y.
9 March 25, 2015
9:45 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 SHANE STANSBURY

ILAN GRAFF

18 Assistant United States Attorney

19 ROBERT RAY

20 Attorney for Defendant

21 ALSO PRESENT:

22 MIRTA HESS, Spanish Interpreter

JORDAN FOX, Spanish Interpreter

23 JASON STAAB-PETERS, DEA Special Agent

24 JOSEPH ROSENBERG, USAO Paralegal

1 federal case is a serious case. But not every case is close,
2 and this case isn't close.

3 Three years ago, the defendant made his choice, made a
4 choice to fly halfway across the world and help a terrorist
5 organization transport 4,000 kilograms of cocaine and receive
6 deadly weapons in the process. He didn't blink, he didn't
7 hesitate, and he didn't think he was going to get caught. He
8 didn't think that three years later, he would have to appear
9 here in this courtroom before you.

10 Focus on the evidence. Don't listen to the noise.
11 Use your common sense. Listen carefully to Judge Rakoff's
12 instructions on the law. If you do those things, there is only
13 one conclusion that you can reach that is consistent with the
14 evidence that you have seen throughout this trial - that the
15 defendant is guilty of every charge in the indictment.

16 Thank you.

17 THE COURT: Thank you very much. I'll now ask my law
18 clerk and courtroom deputies to hand out to each member of the
19 jury a copy of my charge, we will read it together, and then
20 you'll have it to take with you into the jury room.

21 Okay. Ladies and gentlemen, if you look in the table
22 of contents, you'll see that my instructions are divided into
23 three parts. The first part are general instructions that
24 would apply to, in fact, every criminal case. And then there
25 are, in the middle section, the instructions that apply to the

1 particular four charges here. And then there are some
2 concluding instructions about how you fill out your verdict
3 form and things like that.

4 So let's turn to page 1 and begin with the general
5 instructions.

6 We are now approaching the most important part of this
7 case, your deliberations. You have heard all the evidence in
8 the case, as well as the final arguments of the lawyers for the
9 parties. Before you retire to deliberate, it is my duty to
10 instruct you as to the law that will govern your deliberations.
11 As I told you at the start of this case, and as you agreed, it
12 is your duty to accept my instructions of law and apply them to
13 the facts as you determine them.

14 Regardless of any opinion that you may have as to what
15 the law may be or ought to be, it is your sworn duty to follow
16 the law as I give it to you. Also, if any attorney or other
17 person has stated a legal principle different from any that I
18 state to you in my instructions, it is my instructions that you
19 must follow.

20 Because my instructions cover many points, I have
21 provided each of you with a copy of them, not only so that you
22 can follow them as I read them to you now, but also so that you
23 can have them with you for reference throughout your
24 deliberations. In listening to them now and reviewing them
25 later, you should not single out any particular instruction as

1 alone stating the law, but you should instead consider my
2 instructions as a whole.

3 Your duty is to decide the fact issues in the case and
4 arrive, if you can, at a verdict. You, the members of the
5 jury, are the sole and exclusive judges of the facts. You pass
6 upon the weight of the evidence, you determine the credibility
7 of the witnesses, you resolve such conflicts as there may be in
8 the testimony, and you draw whatever reasonable inferences you
9 decide to draw from the facts as you determine them.

10 In determining the facts, you must rely upon your own
11 recollection of the evidence. To aid your recollection, we
12 will send you all the exhibits at the start of your
13 deliberations, and if you need to review particular items of
14 testimony, we can also arrange to provide them to you in
15 transcript or readback form.

16 Let me interrupt for one second to say: You will take
17 your transcripts into the jury room as well. We will not send
18 in the actual recordings, but if you want any particular
19 recording played, then you send us a note, and we'll have you
20 come out, and we will play the recording, but we don't have
21 recording machines in the jury room itself. So for that
22 purpose, if you want to hear a recording, you'll have to send
23 us a note, and we will bring you out for that purpose.

24 So back to the instructions:

25 Please remember that none of what the lawyers have

1 said in their opening statements, in their closing arguments,
2 in their objections or in their questions, is evidence. Nor is
3 anything I may have said evidence. The evidence before you
4 consists of just three things: The testimony given by
5 witnesses that was received in evidence, the exhibits that were
6 received in evidence, and the stipulations of the parties that
7 were received in evidence.

8 Testimony consists of the answers that were given by
9 the witnesses to the questions that were permitted. Please
10 remember that questions, although they may provide the context
11 for answers, are not themselves evidence. Only answers are
12 evidence, and you should, therefore, disregard any question to
13 which I sustained an objection. Also, you may not consider any
14 answer that I directed you to disregard or that I directed be
15 stricken from the record. Likewise, you may not consider
16 anything you heard about the contents of any exhibit that was
17 not received in evidence.

18 Furthermore, you should be careful not to speculate
19 about matters not in evidence. For example, there is no legal
20 requirement that the government prove its case through a
21 particular witness or by use of a particular law enforcement
22 technique. Nor should you speculate about why one or another
23 person whose name may have figured in the evidence is not part
24 of this trial or what his or her situation may be. Your focus
25 should be entirely on assessing the evidence that was presented

1 here for your consideration.

2 It is the duty of the attorney for each side of a case
3 to object when the other side offers testimony or other
4 evidence that the attorney believes is not properly admissible.
5 Counsel also have the right and duty to ask the Court to make
6 rulings of law and to request conferences at the sidebar out of
7 the hearing of the jury. All such questions of law must be
8 decided by me. You should not show any prejudice against any
9 attorney or party because the attorney objected to the
10 admissibility of evidence, asked for a conference out of the
11 hearing of the jury, or asked me for a ruling on the law.

12 I also ask you to draw no inference from my rulings or
13 from the fact that on occasion I asked questions of certain
14 witnesses. My rulings were no more than applications of the
15 law, and my questions were only intended for clarification or
16 to expedite matters. You are expressly to understand that I
17 have no opinion as to the verdict you should render in this
18 case.

19 You are to perform your duty of finding the facts
20 without bias or prejudice as to any party. You are to perform
21 your final duty in an attitude of complete fairness and
22 impartiality. You are not to be swayed by rhetoric or
23 emotional appeals. The fact that the prosecution is brought in
24 the name of the United States of America entitles the
25 government to no greater consideration than that accorded any

1 other party. By the same token, it is entitled to no less
2 consideration. All parties, whether the government or
3 individuals, stand as equals at the bar of justice.

4 Please also be aware that the question of possible
5 punishment is the province of the judge, not the jury, and it
6 should, therefore, not enter into or influence your
7 deliberations in any way. Your duty is to weigh the evidence
8 and not be affected by extraneous considerations.

9 It must be clear to you that if you were to let bias,
10 or prejudice, or fear, or sympathy, or any other irrelevant
11 consideration interfere with your thinking, there would be a
12 risk that you would not arrive at a true and just verdict. So
13 do not be guided by anything except clear thinking and calm
14 analysis of the evidence.

15 The defendant here, Rafael Antonio Garavito-Garcia, is
16 charged with four federal crimes about which I will instruct
17 you shortly. Please bear in mind, however, that the charges,
18 or counts, as they are called, are not themselves evidence of
19 anything.

20 The defendant has pleaded not guilty. To prevail
21 against the defendant on a given charge, the government must
22 prove every essential element of that charge beyond a
23 reasonable doubt. If the government succeeds in meeting this
24 burden, your verdict should be guilty on that charge. If it
25 fails, your verdict must be not guilty on that charge. This

1 burden never shifts to the defendant for the simple reason that
2 the law presumes a defendant be innocent and never imposes upon
3 a defendant in a criminal case the burden or duty of calling
4 any witness or producing any evidence.

5 In other words, as to each charge, a defendant starts
6 with a clean slate and is presumed innocent until such time, if
7 ever, that you as a jury are satisfied that the government has
8 proved that the defendant is guilty of that charge beyond a
9 reasonable doubt.

10 Since in order to convict a defendant of a given
11 charge, the government is required to prove that charge beyond
12 a reasonable doubt, the question then is: What is a reasonable
13 doubt? The words almost define themselves. It is a doubt
14 based upon reason. It is a doubt that a reasonable person has
15 after carefully weighing all the evidence. It is a doubt that
16 would cause a reasonable person to hesitate to act in a matter
17 of importance in his or her personal life. Proof beyond a
18 reasonable doubt must, therefore, be proof of a convincing
19 character that a reasonable person would not hesitate to rely
20 on in making an important decision.

21 A reasonable doubt is not caprice or whim. It is not
22 speculation or suspicion. It is not an excuse to avoid the
23 performance of an unpleasant duty. The law does not require
24 that the government prove guilt beyond all possible or
25 imaginable doubt. Proof beyond a reasonable doubt is

1 sufficient to convict.

2 If, after a fair and impartial consideration of the
3 evidence, you have a reasonable doubt as to the defendant's
4 guilt with respect to a particular charge against him, you must
5 find the defendant not guilty of that charge. On the other
6 hand, if, after fair and impartial consideration of all the
7 evidence, you are satisfied beyond a reasonable doubt of the
8 defendant's guilt with respect to a particular charge against
9 him, you should not hesitate to find the defendant guilty of
10 that charge.

11 In deciding whether the government has met its burden
12 of proof, you may consider both direct evidence and
13 circumstantial evidence.

14 Direct evidence is evidence that proves a fact
15 directly. For example, where a witness testifies as to what he
16 or she saw, or heard or observed, that is called direct
17 evidence.

18 Circumstantial evidence is evidence that tends to
19 prove a fact by proof of other facts. To give a simple
20 example, suppose that when you came into the courthouse today,
21 the sun was shining, and it was a nice day, but the courtroom
22 blinds were drawn, and you could not look outside. Later, as
23 you were sitting here, someone walked in with a dripping wet
24 umbrella, and soon after, somebody else walked in with a
25 dripping wet raincoat. Now, on our assumed facts, you cannot

1 look outside the courtroom, and you cannot see whether it is
2 raining, so you have no direct evidence of that fact. But, on
3 the combination of the facts about the umbrella and the
4 raincoat, it would be reasonable for you to infer that it had
5 begun raining.

6 That is all there is to circumstantial evidence.
7 Using your reason and experience, you infer from established
8 facts the existence or the nonexistence of some other fact.
9 Please note, however, that it is not a matter of speculation or
10 guess, it is a matter of logical inference.

11 The law makes no distinction between direct and
12 circumstantial evidence. Circumstantial evidence is of no less
13 value than direct evidence, and you may consider either or both
14 and may give them such weight as you conclude is warranted.

15 It must be clear to you by now that counsel for the
16 government and counsel for the defendant are asking you to draw
17 very different conclusions about various factual issues in the
18 case. Deciding these issues will involve making judgments
19 about the testimony of the witnesses you have listened to and
20 observed. In making these judgments, you should carefully
21 scrutinize all of the testimony of each witness, the
22 circumstances under which each witness testified, and any other
23 matter in evidence that may help you to decide the truth and
24 the importance of each witness' testimony.

25 Your decision to believe or to not believe a witness

1 may depend on how that witness impressed you. How did the
2 witness appear? Was the witness candid, frank and forthright?
3 Or did the witness seem to be evasive or suspect in some way?
4 How did the way the witness testified on cross-examination
5 compare with how the witness testified -- I'm sorry, how did
6 the way the witness testified on direct examination compare
7 with how the witness testified on cross-examination? Was the
8 witness consistent or contradictory? Did the witness appear to
9 know what the witness was talking about? Did the witness
10 strike you as someone who was trying to report the witness'
11 knowledge accurately? These are examples of the kinds of
12 common sense questions you should ask yourselves in deciding
13 whether a witness is or is not truthful.

14 How much you choose to believe a witness may also be
15 influenced by the witness' bias. Does the witness have a
16 relationship with the government or the defendant that may
17 affect how the witness testified? Does the witness have some
18 incentive, loyalty or motive that might cause the witness to
19 shade the truth? Does the witness have some bias, prejudice or
20 hostility that may cause the witness to give you something
21 other than a completely accurate account of the facts that the
22 witness testified to?

23 In this regard, you have heard testimony from
24 cooperating witnesses who testified that they have entered into
25 agreements to cooperate with the government, either in an

1 effort to secure a reduced sentence or to avoid prosecution
2 altogether for crimes they previously committed. The law
3 permits the use of testimony from such witnesses. Indeed, such
4 testimony, if found truthful by you, may be sufficient in
5 itself to warrant conviction if it convinces you of the
6 defendant's guilt beyond a reasonable doubt. However, the law
7 requires that the testimony and motives of a cooperating
8 witness be scrutinized with particular care and caution. After
9 carefully scrutinizing the testimony of a cooperating witness
10 and taking account of its special features, you may give it as
11 little or as much weight as you deem appropriate.

12 As to all witnesses, you should also consider whether
13 a witness had an opportunity to observe the facts the witness
14 testified about and whether the witness' recollection of the
15 facts stands up in light of the other evidence in the case. In
16 other words, what you must try to do in deciding credibility is
17 to size up a person just as you would in any important matter
18 where you are trying to decide if a person is truthful,
19 straightforward and accurate in his or her recollection.

20 The defendant did not testify in this case. Under our
21 Constitution, a defendant has no obligation to testify or to
22 present any evidence because it is the government's burden to
23 prove a defendant guilty beyond a reasonable doubt. A
24 defendant is never required to prove that the defendant is
25 innocent.

1 Accordingly, you must not attach any significance to
2 the fact that the defendant did not testify. No adverse
3 inference against the defendant may be drawn by you because the
4 defendant did not take the witness stand, and you may not
5 consider it against the defendant in any way in your
6 deliberations in the jury room.

7 With these preliminary instructions in mind, let us
8 now turn to the four charges against Mr. Garavito-Garcia. Each
9 count of the indictment charges the defendant with conspiring
10 with one or more other people to violate the law.
11 Specifically, Count One charges Mr. Garavito-Garcia with
12 conspiring to distribute five kilograms or more of cocaine with
13 intent to provide something of value to a terrorist
14 organization, specifically the FARC.

15 Count Two charges Mr. Garavito-Garcia with conspiring
16 to distribute five kilograms or more of cocaine, intending that
17 the substance would be imported into the United States.

18 Count Three charges Mr. Garavito-Garcia with
19 conspiring to provide material support or resources to a
20 foreign terrorist organization, again, the FARC.

21 Finally, Count Four charges Mr. Garavito-Garcia with
22 conspiring to acquire and transfer antiaircraft missiles to the
23 FARC for the purpose of attacking U.S. helicopters.

24 As you will notice, each of these counts charges that
25 the defendant participated in a conspiracy, which is an

1 agreement between two or more persons to break the law. But
2 each of the charged conspiracies is different and must be
3 considered on its own terms. For example, while Count Two
4 requires that the conspiracy intended an importation of cocaine
5 into the United States, and Count Four requires that the
6 conspiracy intended the attacking of U.S. helicopters, Counts
7 One and Three do not require any connection to the U.S. at all,
8 but simply conspiracies to aid a terrorist organization, the
9 FARC.

10 Let us, therefore, discuss each of the counts
11 separately.

12 Count One charges the defendant with conspiring to
13 distribute five kilograms or more of cocaine with intent to
14 provide something of pecuniary value to the FARC.

15 In order to sustain its burden of proof with respect
16 to this charge, the government must prove beyond a reasonable
17 doubt each of the following two elements: First, that the
18 charged conspiracy existed; and, second, that the defendant
19 unlawfully, intentionally and knowingly joined and participated
20 in the conspiracy at some point during the applicable time
21 period.

22 Starting with the first element, what is a conspiracy?
23 A conspiracy is an agreement or an understanding of two or more
24 persons to accomplish by concerted action one or more unlawful
25 objectives.

1 Please note that an undercover agent cannot be a
2 coconspirator. Specifically, because Ricardo Jardinero and the
3 person referred to as Juancho were secretly acting on behalf of
4 the government, they could not have actually agreed to or been
5 a member of an unlawful conspiracy even though they were
6 pretending to be. Accordingly, in determining whether this or
7 any other conspiracy here charged existed, you cannot for that
8 purpose consider Mr. Jardinero or Juancho a member of any
9 conspiracy, but you can consider any other person as a
10 potential member of the alleged conspiracy if that person
11 enters into the conspiratorial agreement for the purpose of
12 furthering its unlawful objective.

13 For this count, the unlawful objective alleged to be
14 the object of the conspiracy is not simply the distribution of
15 cocaine, but the distribution of five kilograms or more of
16 cocaine with the knowledge and intent that such distribution
17 would provide something of pecuniary value to a terrorist
18 organization, specifically the FARC. "Distribution" includes
19 delivering, passing or handing over cocaine to another person
20 or causing it to be delivered, passed on or handed over to
21 another person. Distribution does not require a sale.
22 "Something of pecuniary value" means something of monetary or
23 economic value, such as money or cocaine.

24 Please note that the conspiracy charged in Count One
25 does not have to intend distribution of cocaine to the United

1 States, but it does have to intend that the distribution would
2 provide something of pecuniary value to the FARC.

3 Please also bear in mind that the actual commission of
4 the objective of the conspiracy is not an element of the crime
5 of conspiracy. Thus, you need not find that the conspirators
6 actually distributed cocaine and provided something of
7 pecuniary value to the FARC, but only that they agreed to
8 distribute at least five kilograms or more of cocaine,
9 intending to thereby provide something of pecuniary value to
10 the FARC.

11 As for the time frame of the alleged conspiracy,
12 although it is charged that the conspiracy began in or about
13 May 2012 and continued through January 2013, it is not
14 essential that the government prove that the conspiracy started
15 and ended on specific dates or that it existed throughout that
16 period. Rather, it is sufficient to satisfy the first element,
17 that you find that in fact a conspiracy was formed, and that it
18 existed for any time within the charged period.

19 If you conclude that the government has proven beyond
20 a reasonable doubt that the charged conspiracy existed, you
21 must then consider the second essential element, which is that
22 the defendant, Mr. Garavito-Garcia, was a member of the
23 conspiracy. To prove this second element, the government must
24 prove beyond a reasonable doubt that the defendant participated
25 in the charged conspiracy and that he did so unlawfully,

1 intentionally and knowingly.

2 "Unlawfully" means obviously contrary to law, but in
3 terms of its application to the defendant's state of mind, the
4 government is not required to show that the defendant knew that
5 he was breaking any particular law. The government must prove,
6 however, that the defendant was aware of the generally unlawful
7 nature of his acts.

8 "Intention" means to act deliberately and with a bad
9 purpose rather than innocently.

10 "Knowingly" means to act consciously and voluntarily
11 rather than by mistake, or accident or mere inadvertence.

12 Here, the parties have stipulated that the FARC has
13 been designated a terrorist organization by the Department of
14 State, but the government must still prove beyond a reasonable
15 doubt that the defendant, in joining a conspiracy to distribute
16 cocaine for the purpose of providing something of pecuniary
17 value to the FARC, knew or believed that the FARC was engaged
18 in terrorist activity.

19 "Terrorist activity" includes the use of explosive,
20 firearms or other dangerous weapons with the intent to endanger
21 the safety of one or more persons or to cause substantial
22 damage to property.

23 If you find beyond a reasonable doubt that the
24 defendant participated in the charged conspiracy and did so
25 unlawfully, intentionally and knowingly, then the second

1 element is satisfied.

2 In this regard, it is not necessary that the defendant
3 be fully informed of all the details of the conspiracy in order
4 to justify an inference of membership on his part. Nor does
5 the defendant need to know the full extent of the conspiracy or
6 all of its participants. Indeed, it is not necessary that the
7 defendant know more than one other member of the conspiracy.
8 Nor is it necessary that the defendant receive any monetary
9 benefit from participating in the conspiracy. All that is
10 necessary is proof beyond a reasonable doubt that the defendant
11 intentionally joined in the conspiracy for the purpose of
12 furthering its unlawful objective.

13 The defendant also need not have joined the conspiracy
14 at the outset. The defendant may have joined it at any time in
15 its progress, and he will still be held responsible for all
16 that was done before he joined, as well as all that was done
17 during the conspiracy's existence while the defendant was a
18 member.

19 The law does not require that each conspirator have an
20 equal role in the conspiracy. Even a single act may be
21 sufficient to draw the defendant within the ambit of a
22 conspiracy if it meets the essential requirements I have
23 described.

24 However, I wanted to caution you that the mere
25 association by the defendant with a conspirator does not make

1 the defendant a member of the conspiracy even when coupled with
2 knowledge that a conspiracy is taking place. In other words,
3 knowledge without participation is not sufficient. What is
4 necessary is that the defendant has participated in the
5 conspiracy with knowledge of its unlawful purpose and with an
6 intent to aid in the accomplishment of its unlawful objective.

7 Please also note that the fact that two of the
8 witnesses here, Manuel Mane and Mamadu Serifo Biaï, have
9 pleaded guilty to conspiracy charges brought against them,
10 please note that that fact is not in any respect proof of the
11 defendant's guilt, and the fact that they pled guilty cannot be
12 considered against Mr. Garavito-Garcia in any way.

13 In short, in order to satisfy the second essential
14 element of the charged offense, you must find beyond a
15 reasonable doubt that Mr. Garavito-Garcia, with an
16 understanding of the unlawful character of the conspiracy
17 charged in Count One, intentionally joined the conspiracy for
18 the purpose of furthering the unlawful object of distributing
19 cocaine, knowing and intending that doing so would provide
20 something of pecuniary value to FARC, and that he did so
21 knowing or believing that the FARC was engaged in terrorist
22 activities.

23 Finally, as to Count One and every other charge, the
24 government must establish what is called venue. This means
25 that you must determine that the point of entry where the

1 defendant was first brought into the United States was in the
2 Southern District of New York. The Southern District of New
3 York includes Manhattan, the Bronx, Westchester County, and
4 Orange County, as well as other areas not here relevant.
5 Unlike all the other elements of the offense, which must be
6 proved beyond a reasonable doubt, the government is only
7 required to prove venue by a preponderance of the evidence;
8 that is, that it is more probable than not.

9 Count Two charges the defendant with conspiring to
10 distribute five kilograms or more of cocaine, knowing and
11 intending that the substance would be imported into the United
12 States. In order to sustain its burden of proof with respect
13 to this charge, the government must prove beyond a reasonable
14 doubt each two elements: First, the existence of the charged
15 conspiracy as further described below; and, second, that the
16 defendant unlawfully, intentionally and knowingly joined and
17 participated in the conspiracy at some point during the
18 applicable time period.

19 You should apply to these elements the same general
20 instructions about the nature of a conspiracy and of membership
21 in a conspiracy that I gave you in connection with Count One,
22 with this difference: The conspiracy charged in this count is
23 an agreement to distribute five kilograms or more of cocaine,
24 knowing and intending that some portion of the cocaine would be
25 imported into the United States.

1 You must also find that the conspiracy was formed, and
2 that it existed for some time within the charged period of
3 May 2012 to January 2013.

4 Count Three charges the defendant with conspiring to
5 provide material support or resources to what the defendant
6 knew to be a foreign terrorist organization. In order to
7 sustain its burden of proof with respect to this charge, the
8 government must prove beyond a reasonable doubt each of the
9 same two essential elements discussed in Counts One and Two:
10 First, the existence of the charged conspiracy as further
11 described below; and, second, that the defendant unlawfully,
12 intentionally and knowingly joined and participated in the
13 conspiracy at some point during the applicable time period.

14 Again, I have already instructed you about these two
15 elements in general, and you should apply those instructions to
16 the conspiracy here charged.

17 In this count, the alleged objective of the conspiracy
18 was to provide material support or resources to a foreign
19 terrorist organization, here, the FARC. Specifically, the
20 government charges that the conspirators intended to supply the
21 FARC with weapons, and with transportation, and equipment for
22 the distribution of cocaine. The government need not prove
23 that the conspiracy had both of these objects. It is enough
24 for you to find that it had at least one of these objects; that
25 is, supplying the FARC with weapons or supplying the FARC with

1 transportation and equipment for the distribution of cocaine.
2 However, it is not sufficient for some of you to find that one
3 object has been proved and others of you to find that the other
4 object has been proved. Rather, your finding that a given
5 object has been proved must be unanimous.

6 As was the case with Count One, the conspiracy does
7 not have to contemplate any contact with the United States, but
8 must instead contemplate providing material support or
9 resources for a terrorist organization. The parties have
10 stipulated that the FARC is a designated foreign terrorist
11 organization, but the government must prove beyond a reasonable
12 doubt that the defendant, in joining the conspiracy charged in
13 Count Three, knew or believed that the FARC had engaged or was
14 engaging in terrorist activity. As I previously defined it,
15 terrorist activities includes the use of explosive, firearms or
16 other dangerous weapons with the intent to endanger the safety
17 of one or more persons or to cause substantial damage to
18 property.

19 Also, you must find the conspiracy was formed, and
20 that it existed for some time within the charged period of
21 May 2012 to January 2013.

22 Count Four charges the defendant with conspiring to
23 acquire and transfer antiaircraft missiles for the purpose of
24 attacking U.S. helicopters. In order to sustain its burden of
25 proof with respect to this charge, the government must prove

1 beyond a reasonable doubt each of the two elements, which by
2 this point should be familiar: First, the existence of the
3 charged conspiracy as further described below; and, second,
4 that the defendant unlawfully, intentionally and knowingly
5 joined and participated in the conspiracy at some point during
6 the applicable time period.

7 You should apply my general instructions as previously
8 given as to both of these elements with this difference: The
9 object of the conspiracy alleged in Count Four is to acquire
10 and transfer antiaircraft missiles for the purpose of enabling
11 the FARC to attack United States helicopters in Colombia.
12 Antiaircraft missiles are explosive or incendiary rockets or
13 missiles guided by a system enabling the rockets or missiles to
14 seek aircraft.

15 The time frame for this conspiracy is May 2012 to
16 January 2013, and you must also find beyond a reasonable doubt
17 that the charged conspiracy was formed and that it existed for
18 some time within that period.

19 You will shortly retire to the jury room to begin your
20 deliberations. As soon as you get to the jury room, please
21 select one of your numbers as the foreperson to preside over
22 your deliberations and to serve as your spokesperson if you
23 need to communicate with the Court.

24 You will be bringing with you into the jury room a
25 copy of my instructions of law and a verdict form on which to

1 record your verdict.

2 Let me pause there for a moment. So, ladies and
3 gentlemen, this is the verdict form, it's just two pages,
4 there's the cover page, and then there are four questions, and
5 the four questions correspond to the four counts, and with
6 each count, you either say guilty or not guilty, you check the
7 appropriate box.

8 After you've reached your verdict, your foreperson
9 will sign this form, will date it, will fold it up nicely, and
10 place it and seal it in this envelope very cleverly marked
11 "Verdict," and that will then be brought out to me, but I will
12 not open it and will not read it until you're all back here in
13 the courtroom, and then we will read the verdict, and we will
14 ask each of you individually whether that is your verdict. The
15 reason we go through all those little steps is to be absolutely
16 sure that we have your verdict as you have decided.

17 Back to the instructions:

18 In addition, we will send into the jury room all of
19 the exhibits that were admitted into evidence. If you want any
20 of the testimony provided, that can also be done in either
21 transcript or readback form, but please remember that it is not
22 always easy to locate what you might want, so be as specific as
23 you possibly can be in requesting portions of the testimony.

24 Any of your requests, in fact any communication with
25 the Court, should be made to me in writing, signed by your

1 foreperson and given to the marshal, who will be available and
2 outside the jury room throughout your deliberations. After
3 consulting with counsel, I will respond to any question or
4 request you have as promptly as possible either in writing or
5 by having you return to the courtroom so that I can speak with
6 you in person.

7 You should not, however, tell me or anyone else how
8 the jury stands on any issue until you have reached your
9 verdict and recorded it on your verdict form. As I have
10 already explained, the government, to prevail on a particular
11 charge against the defendant, must prove each essential element
12 of that charge beyond a reasonable doubt. If the government
13 carries this burden, you should find the defendant guilty of
14 that charge, otherwise you must find the defendant not guilty
15 of that charge.

16 Each of you must decide the case for yourself, after
17 consideration, with your fellow jurors, of the evidence in the
18 case, and your verdict must be unanimous. In deliberating,
19 bear in mind that each juror is entitled to his or her opinion.
20 In deliberating, bear in mind that while each juror is entitled
21 to his or her opinion, you should exchange views with your
22 fellow jurors. That is the very purpose of jury deliberation -
23 to discuss and consider the evidence; to listen to the
24 arguments of fellow jurors; to present your individual views;
25 to consult with one another; and to reach a verdict based

1 solely and wholly on the evidence.

2 If, after carefully considering all the evidence and
3 the arguments of your fellow jurors, you entertain a
4 conscientious view that differs from the views of the others,
5 you are not to yield your view simply because you are
6 outnumbered. On the other hand, you should not hesitate to
7 change an opinion that, after discussion with your fellow
8 jurors, now appears to be erroneous. In short, your verdict
9 must reflect your individual views and must also be unanimous.

10 This completes my instructions of law.

11 Now, all objections to the charge previously made are
12 deemed to have been made again at this time, and the Court's
13 rulings stand as previously given.

14 Is there any other reason why any counsel needs to
15 approach the bench?

16 MR. GRAFF: No, your Honor.

17 MR. RAY: Just one brief one, your Honor.

18 THE COURT: Okay. Come to the bench.

19 (Continued on next page)
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